



## Commentary

Comment on *Title IX Investigations: The Importance of Training Investigators in Evidence-Based Approaches to Interviewing*



Brett A. Sokolow\*

Esq., President, ATIXA, United States

Meissner and Lyles (2019) have written an important article with far-reaching implications. Its vision for the future of civil rights investigations in higher education captures where the field needs to go and how it needs to get there. It will be fascinating to see if the field ever achieves the level of empirically derived practice that the article envisions, and if it does, when that will happen.

Given that ATIXA materials and training are described and addressed in the article, it is important to contextualize what ATIXA's trainings are intended to do and how they do or don't comport with the authors' assessments. In some sense, the authors may not understand ATIXA's trainings in full or what ATIXA is trying to accomplish with them, as the competencies of ATIXA rely not just on occasional trainings but on active, long-term membership. To truly understand ATIXA's trainings and philosophy on investigations, the authors would need to address not just the publicly available materials, but those that are provided only to members and to those who register for certification, along with the constant advising and lessons members receive in newsletters, webinars, online trainings, and listserv discussions. Additionally, one would have to take all four levels of ATIXA investigator certification. The authors have not done so.

Taken together, ATIXA's public and private materials and trainings comprise a body of knowledge that is designed for civil rights investigators in the education space and encompasses many—but not all—of the empirical approaches detailed by the authors. If ATIXA were to devise a two-day training (level 5) on advanced questioning and interviewing, ATIXA would incorporate most of the content suggested by the authors. It is ATIXA's sense—knowing our 3500 members well—that the field isn't

quite ready for this content yet, though we are working toward this level of mastery. Most members have not yet completed levels 3 (mock investigation and report writing) and 4 (due process). Sure, there are some advanced practitioners in the field who would benefit from this content, but the critical mass isn't quite there yet, in our estimation.

As conveyed in this article, the authors seem to consider questioning to be the most important aspect of investigations. While questioning is undoubtedly valuable, this is too narrow a perspective given the baseline levels of knowledge we are seeing with our trainees. ATIXA offers two-day trainings with four levels; we only have eight days in total, spread at times over 2–4 years, to impart a vast and complex body of knowledge. Focusing on questioning techniques at the level that the authors suggest within basic levels of training would not permit time to focus on other critical skills that ATIXA has deemed equally important.

We agree that for advanced training, the prescription offered by this article is excellent, and when ATIXA offers trainings for expert investigators, which we do frequently for law firms and private investigation firms, we spend two days teaching many of the approaches and techniques that the authors have identified, as well additional advanced techniques—such as triangulation—that we have found over 20 years and thousands of investigations to be reliable, advantageous, and innovative. We're not researchers, so we readily acknowledge that we haven't subjected our approaches to data collection and analysis. But practitioners have a keen sense for what works developed via experience in the real-world laboratory.

ATIXA Level 1–4 trainings recognize and take into account several key characteristics of the field, including that 80% of higher education investigators are part-time<sup>1</sup> and perform

## Author Note

Brett A. Sokolow, ATIXA, Berwyn, PA, United States.

\* Correspondence concerning this article should be addressed to Brett A. Sokolow, ATIXA, 1109 Lancaster Av., Berwyn, PA 19312, United States. Contact: [brett.sokolow@atixa.org](mailto:brett.sokolow@atixa.org).

investigations in addition to the duties for which they are primarily employed. ATIXA's training methodology acknowledges that many if not most investigators working in the higher education context are relatively novice investigators, rather than professional investigators. Most higher education investigators do not enter this space with deep experience or expertise. This is not to suggest a lack of capacity or talent, just a steep learning curve, with many new professionals in the field, and in positions that have an average turnover rate of three years.<sup>2</sup>

ATIXA set out to create a comprehensive curriculum that empowers novices to become competent, though we recognize that no one can become an experienced professional through a mere eight days of training. A master's degree level course would be necessary—and would provide a great environment to explore the literature introduced by the authors in their article. ATIXA's certification levels address a variety of content, with introductory lessons on approaches to cognitive interviewing and timeline techniques. These lessons are designed to be introductory in order to (a) lay the necessary practice foundations and (b) not overwhelm beginners with sophisticated techniques that need to be built on top of these foundations.

ATIXA's comprehensive curriculum spans a broad range of skills, including

- Basic understanding of Title IX and other civil rights laws
- Basic comprehension of the underpinnings of liability for schools and colleges
- OCR guidance and equity standards
- Organizing and strategizing investigations
- Preparing for the successful interview
- Managing parties' advisors/attorneys
- Basic questioning techniques
- Assessing credibility
- Analyzing evidence – corroboration and triangulation
- Applying the standard of proof
- Trauma-informed interviewing practices
- Understanding policy and policy analysis in the context of an investigation
- Substantive understanding of:
  - Stalking
  - Intimate partner violence
  - Sexual harassment
  - Hostile environment
  - Sexual Violence
- Balancing academic freedom, free speech, and harassing speech
- Accommodation of disability during investigations
- Communication protocols
- Industry standards for investigation practices
- Sharing evidence with the parties
- The role of the investigator in the hearing
- Use of technology in and implications of technology for investigations

- Topics related to witnesses (rapport building, difficult witnesses, etc.)
- Recordkeeping
- Information management
- Incident timeline tracking
- Investigation timeline adherence
- Case studies
- Understanding force, consent, and incapacity in sexual violence cases
- Bias, impartiality, and objectivity
- Report writing
- Confidentiality and privacy considerations
- Retaliation
- Team interviewing
- Interviewee verification
- Complex investigation management

And so on. The topics we cover are often overwhelming to those who have never conducted an investigation before, and are more than most people can absorb in a traditional training setting. We have many people who take Levels 1 and 2 several times, without ever proceeding to Levels 3 and 4. This makes sense, as people absorb new elements of our trainings every time, and we are constantly refreshing content based on rapid evolution of industry standards, relevant literature, guidance, and regulations. Teaching cognitive interview techniques is undoubtedly valuable, but first the trainee needs to be able to distinguish a leading question from a closed-ended question.

ATIXA recognizes the importance of cognitive interview techniques, and we think the field should use them. ATIXA's revised *Investigation-in-a-Box* publication, the original version of which the authors mention in their article, has just been published. Version 2.0 has doubled in length to 300 pages and offers more for a more sophisticated field. In fact, it includes a short section on integrating Cognitive Interview techniques, which we reproduce in the [appendix](#) to provide ATIXA's approach to these techniques.

While no approach is a panacea, our general experience with the cognitive interview is that when compared with the interrogation or adversarial interview model, it is vastly superior. But more important than reverse-order recounting or 360° witness perspectives is the age-old interviewing device of building a rapport with your witness. Proponents of cognitive interviews claim some ownership of this idea, or that it is somehow inherent within the “cognitive interview model,” but the reality is that rapport building significantly predates the current cognitive interview model that the authors reference and is an essential element to a successful interview.

In terms of critiques of the cognitive interview method, there are a few to consider. Most of the data on cognitive interviewing shows that it produces more evidence or recall than interrogation-based or adversarial approaches. Our experience aligns with the data, with the caveat that more is sometimes—although not always—better. There is such a thing as too much evidence, and the approach that we've termed “Chasing the Rabbit into Wonderland,” can produce diminishing returns or even devalue evidence obtained. Excessive use

<sup>1</sup> According to the 2019 ATIXA member survey.

<sup>2</sup> According to the 2018 ATIXA member survey.

of the circling technique of questioning may produce too much variation between statements, or even witness confusion.

Additionally, there are a few staples of the cognitive interview that can countermand commonly accepted trauma-informed best practices and must be used carefully. Our excerpt from *Investigation-in-a-Box*, below, cautions about some of the more commonly triggering approaches. For example, reversed-order recounting is a common approach, but most interviewers will only use the technique—asking the alleged victim to recount the events in reverse order of occurrence—after a linear start-to-finish narrative is attempted and does not produce sufficient recall. Reversing requires the alleged victim to recount the traumatic event, again. If recounting the details is triggering, doing so twice is doubly-triggering. We won't hesitate to question as much as is needed for accuracy, but we accept the trauma-informed precept of avoiding gratuitous recounting. If reversed-order recounting doesn't bear fruit, it can do more harm than good. We typically procure just as much recall from the "close your eyes, picture the scene, and tell us what you are seeing" approach than from reversed-order recounting.

Similarly, cognitive interviewing recommends a five-senses technique to jog memory by asking the witness to recount the events by recollection of sight, sound, touch, taste, and smell (not by recall from narrative or storyline memory). Our general experience sees marginal gains from this technique, because the ultimate element at issue is that of consent in a sexual assault allegation. The alleged victim almost always walks into the interview already knowing they didn't consent.

The complication here is that you can ask for recollections of the same incident five different times in five different ways, which is not particularly trauma-informed. Instead, we might ask the alleged victim to draw a picture of the scene and use that to jog memory. It works just as well as the five-senses approach, while also facilitating an easy transition to the timeline technique proffered by the authors, and generally is of a milder emotional impact to the witness.

We have long suggested the creation of timelines as a technique, and empirical research now supports the practice. Initially, we suggested investigators create the timelines, but although creating a specific timeline or clear recollection is needed, having witnesses create their own timelines is often more informative. In fact, we usually create a graphic that allows us to lay one witness' timeline over others' to assist in reaching a consensus among many witnesses' account regarding what happened and when.

Finally, we share one last experiential observation that may be somewhat surprising. Memory gaps aren't such an overwhelming concern to us. Investigators associated with ATIXA have conducted thousands of investigations and thousands of interviews. Almost all the cases involve trauma of some kind. Cognitive Interview methods and similar techniques proceed from the assumption that there are frequent gaps in recall that are critical to understanding the overarching behavior or event at issue, and that we need to fill in those gaps as best we can. In our experience, critical gaps occur in less than 20% of the 400 cases we see each year. Minor gaps occur all the time and

are not consequential. Outcome-determinative gaps are exceedingly rare. Critical gaps are not nearly as common as many non-practitioners believe, and not nearly as common as they were perhaps twenty years ago. Why? Social media. Texting. Instant Messages. They all allow the alleged victim to refresh their recollection before meeting with investigators. Additionally, in the past alleged victims refrained from or avoided telling others about an incident of sexual violence. Often, investigators were the first people they told. Now, that is rarely the case. Societal stigma has diminished, and alleged victims have usually processed the experience with others before they meet with investigators. This both aids recall and prompts them to think about gaps before the interview. One more reason is that alleged victims better understand the investigation process now, and don't want to admit to gaps in their memory, so they fill in gaps with logical information even if they don't explicitly recall it. Are they trying to please the investigator? Perhaps, but it is just as likely that their memories are changed simply by the act of retrieval; it's not the case that they are fabricating memories, but rather that they are experiencing a common and inevitable evolution of memory that occurs every time a memory is retrieved.

In conclusion, we are encouraged by the authors' exhortations to the field to become more familiar with the literature and those techniques that are supported by research to improve the quality of investigation interviews, aid in memory retrieval, and move away from interrogation-based and adversarial methods. As the field evolves and matures, ATIXA is committed to training on these techniques to those who have established a foundation of sound investigative practices and to helping to popularize these concepts among our members and trainees.

## Appendix. ATIXA Investigation-in-a-BOX 2.0

### Excerpt: The Cognitive Interview

Occasionally, a party or witness will have difficulty recalling details. If so, some of the techniques of the trauma-informed interview or cognitive interview may help but are really only for filling in gaps. They may also be re-triggering, so use with care.

- If you can and if the reporting party wants, allow several sleep cycles post-incident, before interviewing or trying to retrieve key details from a reporting party.
- Keep your tone interview-based and avoid interrogation-like tactics. Encourage witness narration, and don't interrupt, even if you need details. Circle back to those later.
- Ask the witness to recount the incident in reverse order. This could jog memory but is not to be used as a gratuitous technique with a reporting party, because unnecessary repetition of traumatic information is to be avoided.
- Ask the witness to recount the incident from the third-person perspective of an actual or imagined witness. What would they have seen? This could jog memory but is not to be used as a gratuitous technique with a reporting party, because unnecessary repetition of traumatic information is to be avoided.
- Try to get the witness to give you five-sense impressions. Their sight, sound, smell, taste, or feel senses might jog recall that

their direct memory may not. This could jog memory but is not to be used as a gratuitous technique with a reporting party, because unnecessary repetition of traumatic information is to be avoided.

- Have the witness draw a picture of the scene. This act may provoke memories that are otherwise difficult to retrieve. This could jog memory but is not to be used as a gratuitous technique with a reporting party, because unnecessary repetition of traumatic information is to be avoided.
- Show the witness a photo of the scene or take the witness to the actual scene of the incident and use any of the techniques above. This can be particularly triggering for a reporting party but can be very useful with other witnesses.

Triggering a traumatized witness may be inevitable. Any recounting could be a trigger, but the goal is to avoid gratuitous re-triggering. A reporting party who enters the formal process does so generally understanding they'll need to tell their account—perhaps several times—and be questioned about it. If they don't know that, you need to establish that with them as a reasonable expectation of proceeding formally. The art of interviewing is getting the information you need without hedging or avoiding tough topics, while not making the reporting party relive the trauma over and over again.

If there are certain words or sensitive topics to avoid or minimize—especially with minors—you can often solicit agreement or disagreement from the witness without putting them in the position to say things or talk about topics that are too painful for them to bring up themselves, directly.

**Keywords:** Title IX, Title IX investigations, Cognitive interviewing, Higher education, Civil rights, Memory

### Reference

Meissner, C. A., & Lyles, A. M. (2019). [Title IX investigations: The importance of training investigators in evidence-based approaches to interviewing](#). *Journal of Applied Research in Memory and Cognition*, 8, 387–397.

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